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To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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From: William T Fujioka
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SACRAMENTO UPDATE

Executive Summary

This memorandum contains a report on the following:

- **Pursuit of County Position to Oppose AB 542 (Allen) unless amended.** This bill would modify the requirements that a city or county must meet in preparing the housing element of its general plan to demonstrate how the adopted densities accommodate the regional housing need for lower income households. Specifically, AB 542 would require the County to complete a more stringent financial feasibility analysis that would necessitate additional staff time and the collection of data that may not be readily available. Therefore, consistent with existing Board policy to oppose legislation that would constitute State unfunded land use and general plan-related mandates on local governments, **the Sacramento advocates will oppose AB 542 unless it is amended to retain the general analysis factors required under existing law**.

- **Legislation of County Interest. SB 1156 (Steinberg)** would authorize cities and counties to form a joint powers authority, or a city to form a governing board, for the purpose of administering ongoing economic development activities and affordable housing programs under the California Redevelopment Law (CRL) by using tax increment financing. While deemed "agencies" under the CRL are authorized to use powers of eminent domain, the bodies created under SB 1156

would not be required to make blight findings or eradicate blight as part of their activities. This office is working with affected departments to determine the impact of this bill to the County.

Pursuit of County Position on Legislation

AB 542 (Allen), which would have increased the number of housing opportunities by expanding the number of land sites deemed suitable for residential development that can accommodate a portion of the city's or county's regional housing need by income level, was amended on June 27, 2012. The bill as amended would now modify the requirements that a city or county must meet in preparing the analysis demonstrating how the adopted densities accommodate the regional housing need for lower income households.

Existing law requires that every city and county prepare and adopt a long-term comprehensive general plan for the development of the respective jurisdiction. The general plan has seven mandatory elements, one of which is the housing element. The housing element is required to contain, among other items, an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of those needs, including an inventory of land suitable for residential development.

Cities and counties located within the territory of a Metropolitan Planning Organization (MPO) must revise their housing elements every eight years following the adoption of every other regional transportation plan. Before each revision, each community receives its fair share of housing need for four separate income categories (very low-, low-moderate-, and above moderate-income households) through a two-step process known as the Regional Housing Needs Assessment (RHNA). A city or county must determine and demonstrate whether each site in the inventory of land suitable for residential development can accommodate some portion of the city's or county's share of the RHNA by income level, and the number of housing units that can be accommodated on each site.

With respect to identifying sites with appropriate zoning to meet its share of the RHNA, a city or county must, through a site-specific analysis, calculate the capacity of each site to accommodate a portion of its share of the RHNA by income level during the housing element planning period. This is referred to as the site capacity requirement and takes into account the realistic density for each site, land use controls, and environmental constraints.

In addition, a city or county must provide an analysis demonstrating how its adopted densities accommodate the need for affordable housing; in other words, how the densities allow for economies of scale that facilitate the production of affordable housing with minimum public subsidies. A city or county must make this determination in either of two ways: 1) provide an analysis demonstrating how the adopted densities accommodate lower-income housing based on market demand, financial feasibility, or recent development experience; or 2) document that adopted densities meet or exceed the default densities established in statute.

AB 542 would repeal the general analysis factors and would instead require that the analysis for the sites designated for lower-income housing be based on "substantial evidence" including one or both of the following:

- An analysis demonstrating the financial feasibility of newly constructed unsubsidized, market-rate housing that is affordable to low- and very low-income households at the adopted densities;

- An analysis demonstrating that densities less than the default densities do not increase development costs for affordable housing developments and do not reduce the ability of such developments to obtain subsidies to meet all anticipated funding gaps.

The Department of Regional Planning (DRP) recommends that the County oppose AB 542 unless it is amended to retain the general analysis factors of existing law. As amended, AB 542 represents an unfunded land use and general plan-related mandates on local government. DRP reports that the County's General Plan does not establish minimum density for all of its land use categories. In the County's Draft General Plan released in 2012, the majority of the residential density ranges proposed start at zero. For example, "Residential 9" is zero to nine (0-9) dwelling units per acre and "Residential 50" is zero to fifty (0-50) units per acre. The highest density categories proposed by the County, "Residential 100" and "Residential 150," specify minimum densities but are not yet mapped or are used for existing, relatively new housing developments. Under AB 542, in order for the DRP to prepare the County's mandatory housing element, the Department would need to complete a very stringent financial feasibility analysis which, if not satisfactory to the State, would make it more difficult for the County to receive certification for its housing element. Certification is required for the County to qualify for many State funding programs related to affordable housing.

The Department of Regional Planning also indicates that the cost to prepare the financial feasibility analysis is unknown, since it is a new requirement substantially different than the current general factor analysis required by current law. The DRP projects that it would have to dedicate additional staff time and resources to determine

which data is needed, collect and analyze the required data, and prepare the financial feasibility analysis.

Therefore, consistent with existing Board policy to oppose legislation that would constitute State unfunded land use and general plan-related mandates on local government, **the Sacramento advocates will oppose AB 542 unless it is amended to retain the general analysis factors of existing law**.

AB 542 is sponsored and supported by the County of Napa. The California State Association of Counties supports the addition of analysis factors in AB 542, but requests that it be amended to retain the general analysis factors of existing law. The League of California Cities opposes AB 542 unless amended to restore the general analysis factors.

AB 542 passed the Senate Committee on Transportation and Housing by a vote of 6 to 0 on July 3, 2012 and it currently is on the Senate Floor.

Legislation of County Interest

SB 1156 (Steinberg), which as amended on June 27, 2012, would authorize cities and counties to form a joint powers authority, or a city to form a governing board, for the purpose of administering ongoing economic development activities and affordable housing programs under the California Redevelopment Law (CRL) by using tax increment financing.

Background

The dissolution of redevelopment agencies as a result of the passage of ABX1 26 (Chapter 5, Statutes of 2011) created uncertainty about how local communities will now define, pursue and finance economic development and affordable housing programs. However, ABX1 26 did not revoke the tax increment financing provisions in the California Constitution, nor did it eliminate the CRL. Therefore, many economic development, affordable housing, and environmental advocates have been attempting to craft a new model of redevelopment, one that brings cities and counties together as equal partners in inclusive governance structures and incentivizes cooperation among the jurisdictions that have land use authority and shared responsibility for the larger sustainable economic development goals of the region.

The existing Community Redevelopment Law grants cities and counties the authority to establish redevelopment agencies and grants these agencies the authority to adopt and implement redevelopment plans. The purpose of redevelopment is to eliminate blight in urban areas and to promote low and moderate income housing, employment

opportunities and revitalization of communities. Redevelopment agencies were authorized to exercise specific powers – eminent domain, tax increment financing, and the ability to assembly and sell property – to achieve their goals. The authority for redevelopment agencies to use tax increment financing was added when voters approved Article XII, Section 19 (now Article XVI, Section 16) of the California Constitution in 1952.

The author of SB 1156, Senate President Pro Tem Steinberg, states that this measure is intended to create "a new vision of local economic development and housing policy for the 21st century focused on building sustainable communities and creating high skill, high wage jobs that are the key to our future prosperity." By authorizing the creation of a joint powers authority to use tax increment financing and other financing tools, the bill's author hopes to create a means to continue economic development in the absence of redevelopment agencies while moving beyond the conflict between local governments and schools for limited resources.

Sustainable Communities Investment Program

Specifically, SB 1156 would support the goals of SB 375 (Chapter 728, Statutes of 2008), the California's Sustainable Communities and Climate Protection Act, which created a new procedure to integrate planning elements of transportation, land use, and housing with greenhouse gas reduction targets established by AB 32 (Chapter 488, Statutes of 2006), California's climate change legislation. SB 375 requires that each Metropolitan Planning Organization (MPO) adopt a Sustainable Communities Strategy (SCS) in their regional transportation plans that demonstrate how the region will meet the greenhouse gas emission targets of AB 32.

SB 1156 would support the goals of SB 375 by authorizing tax increment and other sources of funding to finance public infrastructure projects and private commercial and residential developments that would be part of a region's sustainable communities strategies. This bill also would authorize local governments to form a Sustainable Communities Investment Authority (Authority) to carry out provisions of the CRL, as specified, within a Sustainable Communities Investment Area (SCIA). Specifically, SB 1156 would:

- allow an Authority to be formed;
- specify that an Authority must comply with the provisions of the California Redevelopment Law;
- require an Authority to adopt a redevelopment plan for an SCIA;

- require the plan to expire no more than 30 years from the date of the first issuance of bond indebtedness by the Authority;

- authorize the Authority to include a provision for the receipt of tax increment funds, provided that specified requirements are met, in the adopted redevelopment plan;

- establish prequalification requirements for construction contracts that will receive more than $1.0 million from the Authority; and

- require the California Department of Industrial Relations to monitor and enforce compliance with prevailing wage requirements for specified projects.

The Sustainable Communities Investment Authority would be deemed as an "agency" as defined in the CRL, having all the rights, responsibilities and obligations of a redevelopment agency except as they relate to blight. SB 1156 would exempt any Authority formed pursuant to its provisions from having to make blight findings and from having to take any action to eliminate blight as a condition for the creation of the plan for the sustainable communities investment area.

The geographic boundaries and the types of projects to be implemented by the SCIA are detailed in the next section, which is the Sustainable Communities Investment Areas.

SB 1156 allows an Authority to be formed either in an incorporated area or in an unincorporated area. If the Sustainable Communities Investment Area is within an incorporated area, the Authority may be formed in any of the following ways:

- The legislative bodies of the city and county representing the geographical territory of the SCIA may enter into a joint powers authority (JPA) to establish the parameters of the proposed economic development within the proposed investment area;

- A legislative body of a city may form the governing board and establish the parameters of the proposed economic development within a proposed investment area provided the economic development parameters are approved by the county;

- A city and county may appoint a governing board for an SCIA comprised of three members appointed by the city with geographic jurisdiction and two appointed by the county with geographic jurisdiction;

- If an SCIA consists of a single project and 100 percent of tax increment revenue is invested in the project, then a legislative body of a city may appoint a governing board, subject to county approval of the designation of the SCIA;

- If the SCIA is within an unincorporated area, the Authority may be formed by the board of supervisors of a county, or a city and county.

A governing board will be established for each Authority, and shall consist of five members total. Each member will be appointed for a four-year term (except for the initial appointees, who will serve either two- or four-year terms, determined by lot).

Sustainable Communities Investment Areas

SB 1156 limits a Sustainable Communities Investment Area within the geographical boundaries of an MPO,[1] where a sustainable communities strategy has been adopted and approved by the State Air Resources Board, to include:

- Transit priority areas, provided the planned major transit stop or the high-quality transit corridor will be scheduled to be completed within the planning horizon established by the Code of Federal Regulations;

- Small walkable communities, as defined (see below), except that a small walkable community may also be designated in a city that is within the area of an MPO (no more than one small walkable community may be designed with a city);

- Sites that are restricted to clean energy manufacturing and that are consistent with the SCS if those sites are within the geographic boundaries of an MPO.

A small walkable community is defined in the Public Resources Code as a project that is all of the following: 1) in an incorporated city that is not within the boundary of an MPO; 2) within an area of approximately one-quarter mile diameter of contiguous land that includes a residential area adjacent to a retail downtown area; and 3) either a residential

[1] Metropolitan Planning Organizations (MPOs) are transportation policy-making organizations made up of representatives from local government and transportation authorities and are responsible for the cooperative and comprehensive transportation planning process for their urbanized area (as designated by the United States Census Bureau). The MPO boundaries are established according to the federal metropolitan planning regulations. The Southern California Association of Governments (SCAG) functions as the MPO for six counties (Los Angeles, Orange, San Bernardino, Riverside, Ventura and Imperial).

project that has a density of at least eight units to the acre or a commercial project with a floor area ratio of at least 0.5, or both. SB 1156 would expand the definition of a small walkable community to allow projects that are in incorporated cities that are within the boundaries of an MPO.

For the purposes of SB 1156, clean energy manufacturing includes the manufacturing of: 1) components, parts or materials for the generation of renewable energy resources; 2) equipment designed to make buildings more energy efficient (or the component parts thereof); 3) public transit vehicles (or the component parts thereof); or 4) alternative fuel vehicles (or the component parts thereof).

Financing of Sustainable Communities Investment Areas Projects

The redevelopment plan for the SCIA may include a provision for the receipt of tax increment funds provided that the local government with land use jurisdiction has adopted all of the following:

- A sustainable parking standards ordinance that restricts parking in transit priority project areas to encourage transit use to the greatest extent possible;

- An ordinance creating a jobs plan;

- For transit priority areas and small walkable communities within an MPO, a plan consistent with the use designation, density, building intensity, and applicable policies specified for the SCIA in the SCS;

- For small walkable communities outside of an MPO, a plan for new residential construction that provides a density of at least 20 dwelling units per net acre and, for non residential uses, provides a minimum floor area ratio of 0.75.

If a tax increment financing provision is included in the redevelopment plan adopted by the Authority, SB 1156 would exclude school districts and special districts from the terms "district" and "affected taxing entity" for the purposes of tax increment financing under Section 16 of Article XVI of the California Constitution.

In addition to tax increment financing, SB 1156 provides for several other potential funding sources to finance projects undertaken by the Authority. Specifically, SB 1156 permits a State or local pension fund system to invest capital in the public infrastructure projects and private commercial residential developments. It also grants the Authority the ability to exercise the powers of the Marks-Roos Local Bond Polling Act, implement a local transaction and use tax, and issue bonds paid for with Authority proceeds.

Issues of Interest or Potential Concern to the County

This office, Auditor-Controller, County Counsel, and the Community Development Commission have reviewed SB 1156 and have noted several provisions of the bill that are of interest or potential concern to the County. These issues relate to: 1) the proposed governance structures; 2) blight findings; 3) housing; 4) the proposed exemption of some local agencies from tax increment financing; and 5) incentives for transit-oriented development.

Governance Structures

County Counsel indicates that the proposed governance structures would not ensure that counties are given affirmative power to determine their roles in the governance structure of the Authorities proposed under SB 1156. As currently amended, these options would not allow a county to simply "opt-out" of the sustainable community investment area plan and not contribute its tax increment dollars as it would be able to in an infrastructure financing district. In these cases, the sustainable community investment authorities would re-create and mirror one of the characteristics that generated much criticism of redevelopment in California – the diversion of local agency property tax revenues without input into how those resources are used for the term of the project area. At this time, without knowing how many Sustainable Communities Investment Areas may be formed within the County's jurisdiction or the geographic areas these bodies may encompass, it is impossible to determine the exact amount of the County's property tax revenues which would be diverted as tax increment. **However, the Sacramento advocates have learned that the bill's author will propose amendments that would allow counties the option whether to financially participate in tax increment financing for a proposed Sustainable Communities Investment Area.**

Blight Findings

The elimination of any requirements to make blight findings may also create incentives for cities to establish SCIA's in areas that receive the greatest amount of property tax revenues, allowing cities to potentially collect tax increment on a scale far greater than what was collected by former redevelopment agencies (which tended to have project areas in substantially economically depressed areas). This raises potential concerns that in the long-term, SCIA's could have an even greater fiscal impact to the County than the redevelopment project areas created by the former redevelopment agencies.

This office also notes the significance of the provisions in SB 1156 to designate the SCIAs as agencies under the Community Redevelopment Law while exempting them

from the core responsibility of redevelopment agencies under the CRL – the elimination of blight. It is unclear as to why the Authorities should be given the full powers of redevelopment agencies – particularly tax increment financing and eminent domain – without requiring that the agencies document and eliminate blight from the community. Requiring a finding of blight would ensure that the financial resources authorized by this bill would direct economic development activities into the communities that need them the most. Furthermore, requiring blight findings also provides the County with the ability to challenge the creation of new or expansion of existing project areas, thereby limiting the fiscal impact of tax increment financing on the County, as many proposed redevelopment project areas have been invalidated due to insufficient evidence supporting a finding of blight.

County Counsel indicates that previous legal cases have reaffirmed that redevelopment agencies ability to use the powers of eminent domain are predicated on findings of blight. In *County of Los Angeles v. Glendora Redevelopment Project (2010)* the court found that the blight findings adopted by the City of Glendora were not supported by substantial evidence, and therefore the city lacked any eminent domain authority. This case upheld precedent set by *Evans v. the City of San Jose (2005)* in which the judge ruled that "a finding that a project area is blighted is the absolute prerequisite for redevelopment." Without requiring blight findings, the ability for the County to challenge the creation of SCIAs would not exist.

Housing

The measure is also silent on other key requirements of the CRL related to housing. A redevelopment agency must set aside 20 percent of the tax increment revenue derived from the project area to increase, improve, and preserve the supply of affordable housing. A redevelopment agency must also relocate or provide housing for residents who live in the project area that are displaced by the agencies activities. The CRL also contains inclusionary and housing production requirements that ensure that certain percentages of housing developed within the project area is affordable to very-low, low, and moderate income persons or households and occupied by these persons and households. Furthermore, the CRL requires that a Project Area Committee (PAC), consisting of residents and community representatives of the redevelopment project area, be formed if:

- a substantial number of low- or moderate-income persons, or both, live within the project area, and the redevelopment plan as adopted will contain authority for the agency to exercise eminent domain on property on which anyone resides; or

- the redevelopment plan as adopted contains one or more public projects that will displace a substantial number of low- or moderate-income persons.

SB 1156 is silent on these significant CRL housing-related matters, although the author's staff did indicate in the Assembly Committee on Local Government on July 2, 2012 that it is the intent of the bill to meet the 20 percent set-aside requirement.

Proposed Exemption of Certain Local Agencies from Tax Increment Financing

Questions regarding the constitutionality of excluding schools and special districts for the purposes of tax increment financing were raised by members of the Assembly Committee on Housing and Community Development during a hearing on June 27, 2012. An earlier version of the bill included a provision requiring a school mitigation plan to offset the loss of property tax revenue to schools as one of the requirements of the adoption of a sustainable communities investment area plan. By excluding schools and special districts in the current version of the bill, their share of property tax would not be considered in the calculation of tax increment. This "carve out" provision is meant to protect the State's general fund; however, the California Constitution includes schools and special districts in the authorizing language for tax increment financing and it could be unconstitutional to statutorily exempt them for the purposes of this bill. County Counsel reports that the exclusion of schools and special districts from the definitions of "district" and "affected taxing entity" in Article 16, of the California Constitution is likely unconstitutional and that the Legislature cannot use a statute to define constitutional terms. Senator Steinberg's office was instructed to research this issue and report back at the next committee hearing.

Transit-Oriented Development Incentives

The Community Development Commission (CDC) reports that while SB 1156 does not require the proposed agencies to address blighting conditions per se, the transit-oriented focus could potentially allow the County greater flexibility to pursue projects in each Supervisorial Districting including areas such as Willowbrook and Maravilla that are adjacent to mass transit. The CDC also reports that the current incentives available to stimulate transit-oriented development in lower income areas are inadequate.

Status of SB 1156

SB 1156 is supported by the American Federation of State, County, and Municipal Employees, BRIDGE Housing, California Labor Federation, California Special Districts Association, California State Association of Counties (in concept), the City of Burbank, Los Angeles Alliance for a New Economy, Natural Resources Defense Council, and the State Building and Construction Trade Council of California. The bill is opposed by the

Associated Builders and Contractors of California, the California Taxpayers Association, Plumbing-Heating-Cooling Contractors Association of California, and Western Electrical Contractors Association.

SB 1156 passed the Assembly Committee on Local Government by a vote of 6 to 3 on July 2, 2012. The measure is now in the Assembly Committee on Appropriations. A hearing date has not been set.

We will continue to keep you advised.

WTF:RA
MR:VE:AO:ma

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants